Contract Administration

Learning Objectives

Terminal Objectives

Identify Contract Administration Actions Required in a Contingency Contracting Scenario

Discuss Actions a CCO Should Take When Completing a Contract Claim and/or Dispute

Enabling Objectives

Identify documents required in a contract file

Categorize post award actions to be taken by the CCO

Construct a contract modification

Determine actions to take when notified of a potential or actual claim

Identify actions to reduce the probability of claims

Illustrate the Ratification process

Compare contract termination options

Definition and Goals

Definition

All relationships between Government and contractor that arise from contract performance

Includes ***all*** dealings between the parties from time of contract award until work completed and accepted, payment made and any/all disputes resolved

Primary Goals

The Government obtains the needed work: on time (schedule), location and

Obtains the identified level of quality called for by the contract

The Parties are in compliance with all requirements of the contract

Contractor receives proper compensation (payment)

Both parties fulfill all contractual requirements

Contract File Contents

- **All** FAR and DFARS administrative recordkeeping and file management continues during contingency, humanitarian assistance and peacekeeping operations unless specifically stated otherwise.
- Contract ***files*** must be organized and sufficiently annotated to document the actions taken and the supporting rationale for the entire procurement process – including BPAs, GPC and other expenditures

Documentation in files shall—

- Furnish essential facts (including acquisition environment description) used as a basis for informed decisions at each step in the acquisition process
- Document the rationale for actions taken
- Provide a complete audit trail to be used to support reviews or future investigations, litigation or congressional inquiries if necessary

Contract Action Audit System

Audit System: a simple database reporting system to provide visibility and status of procurement actions is required and should be implemented immediately. The system should include the following data fields:

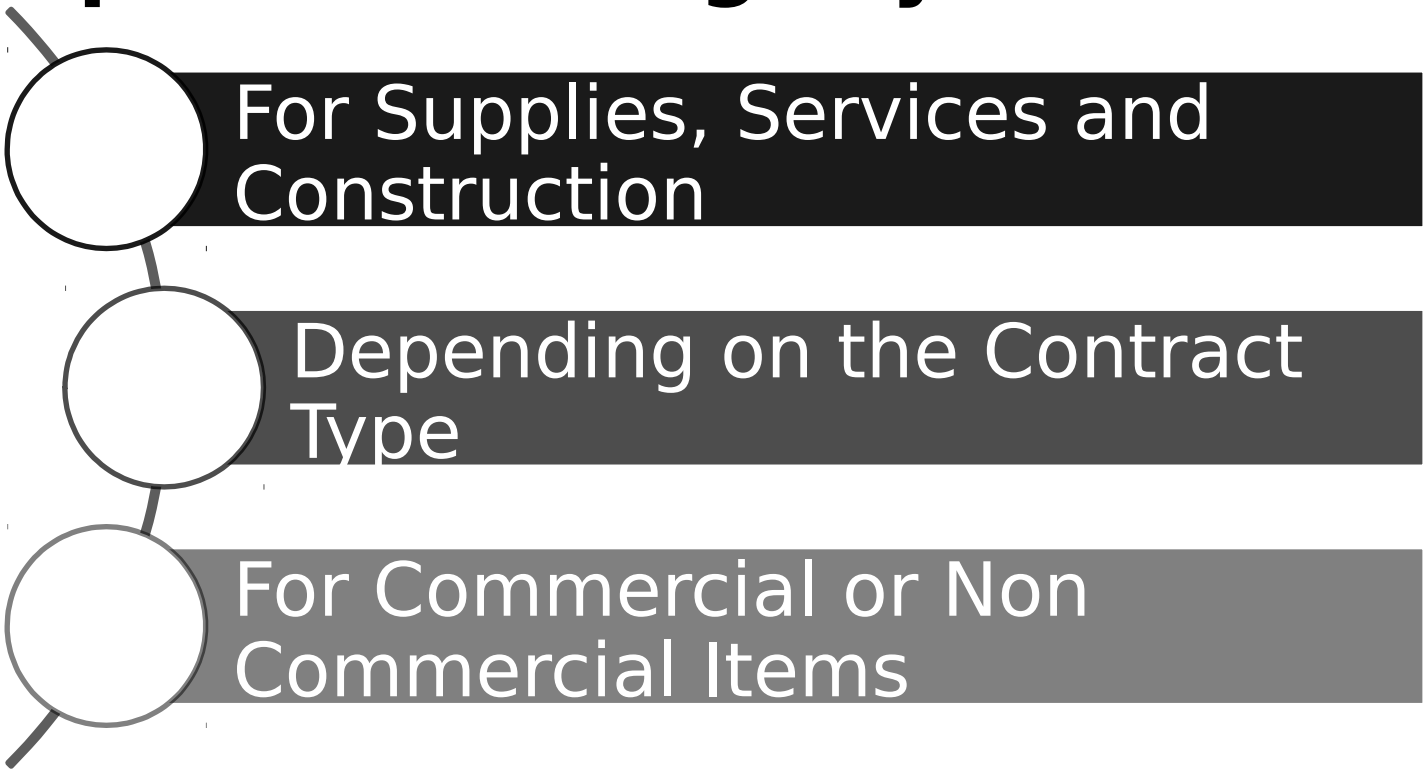
- Date of receipt of requisition (PR)
- Commitment Amount
- Date of award
- Type of contracting action
  - i.e., contract, purchase order, BPA, delivery order, modification
- Contractor name
- PIIN Log*
- Amount of obligated dollars

- Unit of measure/quantity
  - i. e., job, lot, each, etc.
- Item Description
- Contracting Officer's name
- Date of receiving report
- Date of final payment
- Date contract was closed out
- Location of contract file
- Remarks

*** A well constructed PIIN Log is first step to a sound audit system**

Inspection, Acceptance and Payment

The process is slightly different...



The process starts at contract award and does not end until contract **closeout**

Inspection and Acceptance

Inspection

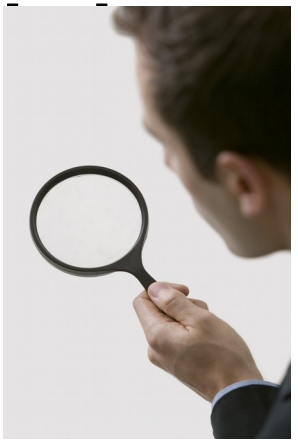
- Examining and testing supplies or services (including when appropriate, raw materials, components, and intermediate assemblies) to determine

Acceptance

- Constitutes government acknowledgment supplies or services ***conform*** with applicable contract quality and quantity requirements and to other terms and conditions of the contract

Government Right to Inspect

- **The contractor is expected to deliver supplies and services meeting all contractual requirements**
- **Government has the right to inspect all materials and workmanship at any time, place where work on a contract is performed**
  - Basis of contract inspection clauses
- **Inspections may:**
  - Occur at any time prior to acceptance
  - Be announced or unannounced
  - Not unduly delay work
  - Not include directions that would change the contract



Quality Assurance Requirements

The government's role in **inspection** is communicated by the quality assurance requirements we select for the contract

- There are four (4) methods/categories of government contract quality assurance

Commercial Items 52.212-4(a)	Inspection by Contractor 52.246-1	Standard inspection requirements	Higher level contract quality requirements
• Gov't reserves the right to inspect items tendered • Post acceptance rights	• At or below the SAT • Gov't does not approve inspection system or review records	• Gov't approves contractor inspection system and record access • Provisions/Clauses: 52.246-2 through 52.246-9	• Gov't involved in inspection throughout contract • ISO, ANSI, ASME, MIL-Q etc. • See 46.202-4(b)

Most Common in the Contingency Environment

Construction Contract Challenges

Full administration is used on construction contracts. The CCO needs to ensure that all pre-award actions have been accomplished.

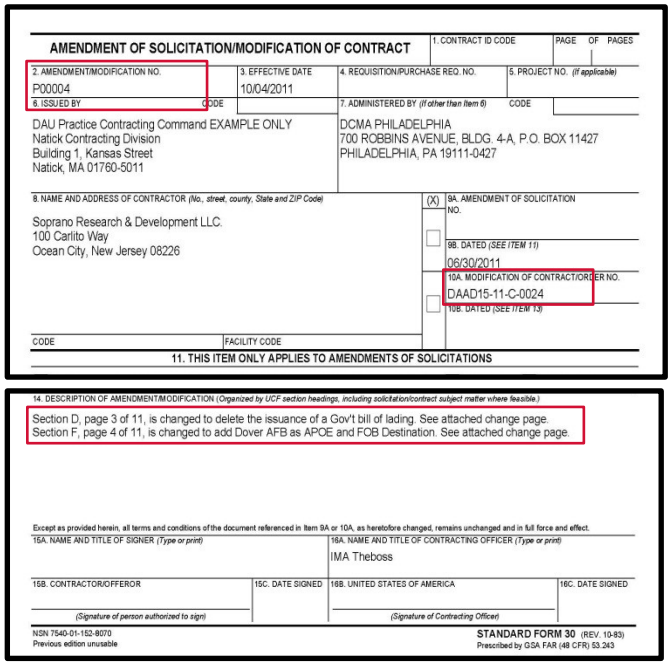
- Pre-Construction Conference
- Bonds
- Labor Challenges
- Determining Progress
- Differing Site Conditions, Materials and Workmanship
- Suspension of Work
- Liquidated Damages (LDs) determination
- Payments

When to Change the Contract

Examples of when a Contract Modification should be executed

- Correcting mistakes
- Adding or removing funding
- Exercising options
- Changing any of the terms and conditions (T&Cs) in any part of the contract (including attachments)
- Changing ***what*** you need, ***where*** you need it, or ***when*** (period of performance) you need it
- Suspend/Stop work
- Terminating work (partial or full)
- Adding additional work (there are ***limitations***)

Modification Numbering



AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE | PAGE OF PAGES

2. AMENDMENT/MODIFICATION NO.: P00004 | 3. EFFECTIVE DATE: 10/04/2011 | 4. REQUISITION/PURCHASE REQ. NO. | 5. PROJECT NO. (If applicable)

6. ISSUED BY | CODE

DAU Practice Contracting Command EXAMPLE ONLY
Natick Contracting Division
Building 1, Kansas Street
Natick, MA 01760-5011

7. ADMINISTERED BY (If other than Item 6) | CODE

DCMA PHILADELPHIA
700 ROBBINS AVENUE, BLDG. 4-A, P.O. BOX 11427
PHILADELPHIA, PA 19111-0427

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

Soprano Research & Development LLC.
100 Carlito Way
Ocean City, New Jersey 08226

(X) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11): 06/30/2011

10A. MODIFICATION OF CONTRACT/ORDER NO.: DAAD15-11-C-0024

10B. DATED (SEE ITEM 13)

CODE | FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Section D, page 3 of 11, is changed to delete the issuance of a Gov't bill of lading. See attached change page.
Section F, page 4 of 11, is changed to add Dover AFB as APOE and FOB Destination. See attached change page.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print): IMA Theboss

15B. CONTRACTOR/OFFEROR | 15C. DATE SIGNED | 16B. UNITED STATES OF AMERICA | 16C. DATE SIGNED

(Signature of person authorized to sign) | (Signature of Contracting Officer)

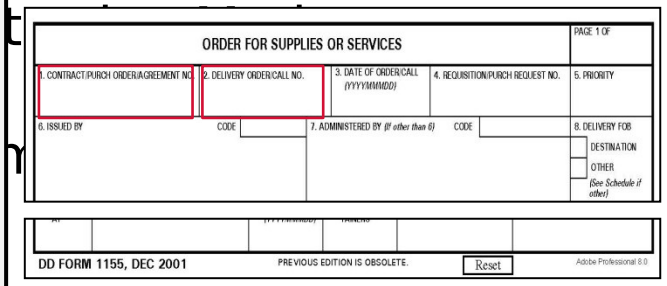
NSN 7540-01-152-8070
Previous edition unusable

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA FAR (48 CFR) 53.243

Modifications are issued using the Standard Form (**SF 30)**

- Known as a "Supplemental Procurement Instrument Identification Number (SPIIN)
- May contain a mix of six (6) alpha and numeric characters
- Issued with sequential numbers, e.g.
  - A00001, A00002

- Task/Delivery Orders have a four character SPIIN (e.g. E003)
  - Modifications to TO/DO's have a two character SPIIN (e.g. 08)



ORDER FOR SUPPLIES OR SERVICES | PAGE 1 OF

1. CONTRACT/PURCH ORDER/AGREEMENT NO. | 2. DELIVERY ORDER/CALL NO. | 3. DATE OF ORDER/CALL (YYYYMMMDD) | 4. REQUISITION/PURCH REQUEST NO. | 5. PRIORITY

6. ISSUED BY | CODE | 7. ADMINISTERED BY (If other than 6) | CODE | 8. DELIVERY FOB: DESTINATION / OTHER (See Schedule if other)

DD FORM 1155, DEC 2001 | PREVIOUS EDITION IS OBSOLETE. | Reset | Adobe Professional 8.0

Types of Contract Modifications

Unilateral

Modification signed *only* by the Contracting Officer (KO)
• Make Administrative Changes
• ***Issue*** Change Orders
• Make changes authorized by clauses ***other*** than Changes Clause – Options, Suspension of Work, etc., incremental funding are common modifications in this category

Bilateral

Supplemental Agreement; Modification signed by *both* Contractor and KO
• Make negotiated Equitable Adjustments
• Definitize letter contracts
• Reflect other agreements between the Parties modifying the terms

FAR 43.103

Change Orders

Written modification signed by CCO, directing contractor to make a change without prior agreement

- Authorized by the "Changes Clause"
- Contractor **must** continue performance, as changed
- Creates "undefinitized" Government liability and Contractor may be entitled to an equitable adjustment
- Definitization schedule must be established

52.212-4 Contract Terms and Conditions - **Commercial Items** Changes in terms and conditions of this contract may be made **only** by written agreement of the parties

Changes Clause - Limitations

Specifies limits on changes without prior contractor agreement

- **Supplies**
  - Changes to drawings, design or specification
  - Method of shipping or packing
  - [illegible]
- **Services**
  - Description of services to be performed
  - Time of performance (hours of day or days of week)
  - Place of performance of services

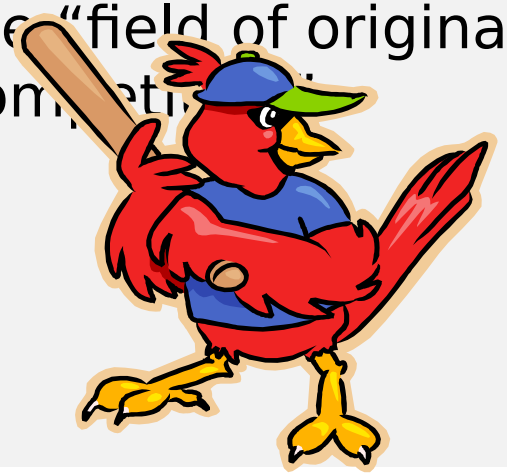
FAR Clauses

52.243-1 Fixed Price
52.243-2 Cost Reimbursement
52.243-3 Time & Material
52.243-4 Construction

Cardinal Change

Is a change beyond the scope of contemplated work

- "Reasonably" contemplated
- Would not have altered the "field of original com[illegible]

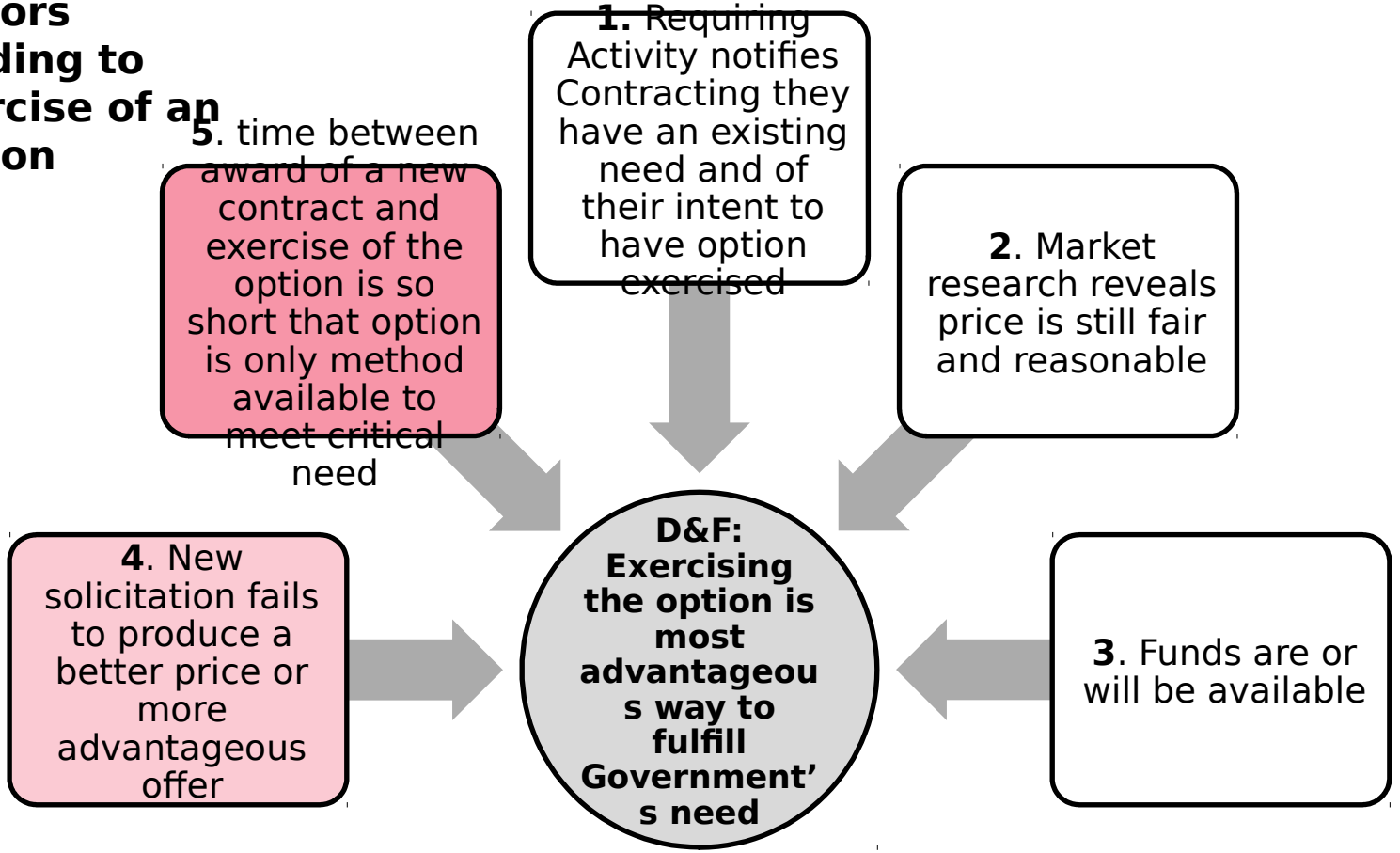


- May require a new contract award for the additional work
- Requires a justification and approval (J&A) for sole source if the work is added to the/an existing contract

Contractor can decline the change if they believe it is outside the scope of the contract

Exercising Options

Factors Leading to Exercise of an Option


1. Requiring Activity notifies Contracting they have an existing need and of their intent to have option exercised
2. Market research reveals price is still fair and reasonable
3. Funds are or will be available
4. New solicitation fails to produce a better price or more advantageous offer
5. time between award of a new contract and exercise of the option is so short that option is only method available to meet critical need
D&F: Exercising the option is most advantageous way to fulfill Government's need

The contracting officer must send a letter to the contractor stating the intent to exercise the option prior to mod issue (52.217-9).

Unauthorized Commitment Ratification

Unauthorized Commitments

Unauthorized Commitment	An agreement that is not binding solely because the government representative who made it ***lacked the authority*** to enter into that agreement on behalf of the government (See FAR 1.602-3)
Ratification	Is the act of approving an *unauthorized commitment* by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the government as a result of the unauthorized commitment (FAR 1.602-3(a)).

Notional Ratification Process

- Individual creating unauthorized commitment will submit a statement detailing:
  - **Why normal procedures were not followed?**
  - **Did government have a bona fide need for service/good?**
  - **Was money available at the**

- Senior Leader advises KO:
  - **Concurrence that commitment should be ratified**
  - **Steps taken to prevent recurrence**
  - **Complete purchase description and funding**
  - **Description of disciplinary action taken or reasons**

The ratification process is similar across Federal Agencies. Organizations will have their own required formats and routing procedures for processing ratifications. You may have to establish those "procedures" at your deployed location.

Ratification Checklist

- Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment
- The ratifying official has the authority to enter into a contractual commitment;
- The resulting contract would otherwise have been proper if made by an appropriate contracting officer;
- The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;
- The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;
- Funds are available and were available at the time the unauthorized commitment was made; and
- The ratification is in accordance with any other limitations prescribed under agency procedures. (FAR 1.602-3(c)).

Claims, Disputes and Appeals

Potential Warning Signs

Complaints from subcontractors

Complaints from site workers

Persistent complaints about government or inspectors

Repeated safety violations

Failure to meet performance deadlines

Repeat incidents of poor quality work

Complaints from Customer

Gov't Remedies for Non-Conformance

The government has contractual authorities available to remedy non-conformance

- Remedies cover a broad range of available options
- CCO should rely on requiring activity/COR in considering a specific remedy

Types of Non-Conformance	Range of Remedies
Late Delivery/Untimely Performance Incorrect Quantity Deficient Quality Improper Labor Practices Lack of QA process/procedures Inadequate Performance Any other Term or Condition (T&Cs)	Reject Replace/Re-perform Repair/Invoke Warranties Withhold $-Payment(s) Liquidated Damages Cure Notice/Show Cause Terminate * *Past Performance* Documentation

Claims and Disputes

Dispute: disagreement between contractor and contracting officer regarding the rights of the

Claim: is a Written Demand Seeking:

- Sum Certain
- Adjustment or Interpretation of a contract Term
- "Other" Relief

Demand or assertion for amounts > $100K is not a claim unless certified IAW FAR 33.207

If contractor cannot support any part of claim and there is misrepresentation of fact or fraud, CCO shall refer to investigative agency

Routine requests (i.e., request for equitable adjustment submitted in response to a change order, invoice for progress payments, etc.) **not** a Dispute or Claim when submitted

Resolution

Attempt to resolve issues and disputes before …

- They become formal claims, or
- Resort to contract termination

Don't let problems grow

Develop recovery schedule or plan

Meet with contract or

through issues as soon as they

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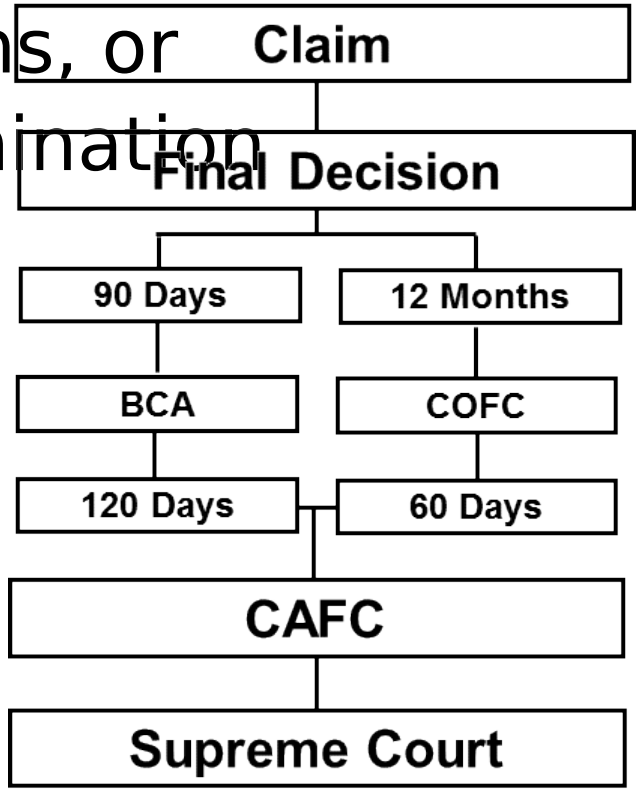


CCO Final Decision (FAR 33.211)

If claim can't be resolved by mutual agreement

- Review facts pertinent to claim
- Secure legal assistance
- Prepare written decision:
  - Description of the claim or dispute
  - Reference to the pertinent contract terms
  - Statement of the factual areas of agreement and disagreement
  - Statement of the contracting officer's decision, with supporting rationale
  - Demand for payment prepared in accordance with 33.610(b) in all cases where

CCO shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt

- Time limitations
  - If claim ≤ $100K, within 60 days of receipt
  - If claim > $100K, 60 days after receiving a certified claim, provided that if decision will not be issued within 60 days, CCO provides an estimated timeframe
- Failure of the CCO to issue a decision within the required time periods will be deemed a decision by the

Disputes – Tips for CCOs

- Under the Contract Disputes Act, CCOs receive **NO** special treatment or waiver of applicable rules simply because a contingency contract action is at issue
- CDA requires contractor to continue performance pending a final resolution of any claim **(FAR 52.233-1 required)**
- Both parties encouraged to use ADR in lieu of expensive, time-consuming litigation

Practical Tips for CCOs

- CCOs, inspectors, and CORs should use digital cameras to document performance problems
- Account for personnel turnover
- Maintain accurate, current contract files, electronic files preferred
- Use legal office (local and/or reach-back) in responding to claims and/or appeals

Contract Terminations

Terminations

	UCF	COM
• Termination for Convenience (**T4C**)	✓	✓
• Termination for Default (**T4D**)	✓	
• Termination for Cause (Similar to Default)		✓

Uniform Contract Format = UCF
Commercial Contract Format = COM

T4C Overview

When to T4C

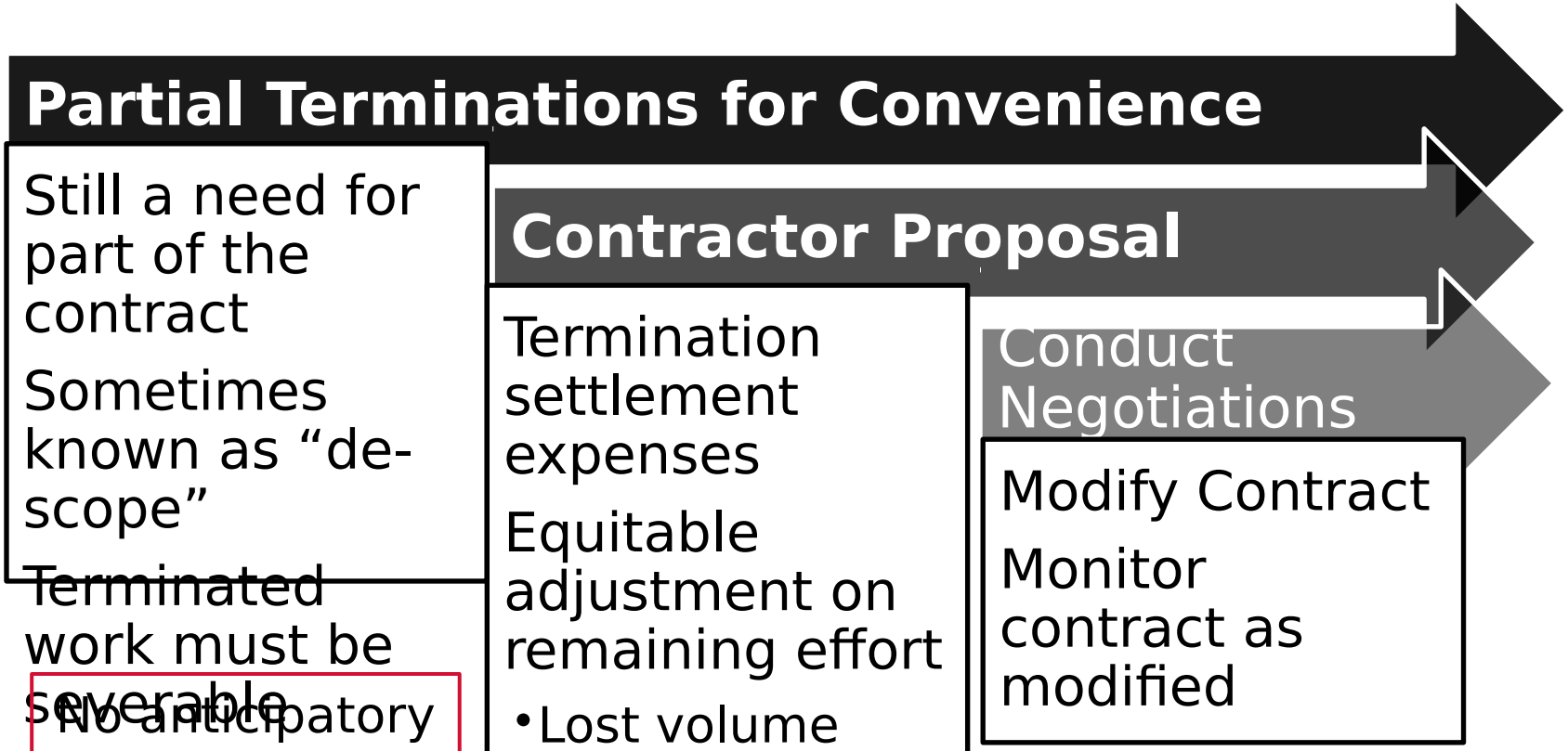
- Requirement no longer exist
- Overstock of supplies or equipment
- Allocation of unexpended funds to higher priority projects
- Defective drawings or specifications furnished by the Gov't
- Major requirement change beyond scope or contractor expertise
- Mutual agreement
- Treaty or other

Important T4C Concepts

- Unique to the government
- Unilateral right of the government
- May only terminate when it is in the "government's best interest"
- When undelivered contract balance is less than $5,000, contract should not normally be T4C,permit to run to completion

(3) There are no outstanding payments, debts due the

Partial Terminations


Partial Terminations for Convenience
Still a need for part of the contract
Sometimes known as "de-scope"
Terminated work must be severable
Contractor Proposal
Termination settlement expenses
Equitable adjustment on remaining effort
• Lost volume discounts
• Increased O/H to non terminated work
• Unabsorbed start-up costs, etc
No anticipatory profits or O/H that could have been absorbed allowed
Conduct Negotiations
Modify Contract
Monitor contract as modified

Termination for Default (T4D)

Government, by written notice, may terminate the contract for the contractor's ***failure*** to perform the following:

- Deliver supplies or perform services within a specified time
- Make progress that endangers contract performance
- Perform any other provisions of the contract
  - Supplies or services do not conform to contract requirements
  - Safety or security

Delinquency Notices

CURE NOTICE	SHOW CAUSE NOTICE
Contractor on notice government considers performance to be endangered	Contractor on notice government considers situation not to be fixed/“cured”
Identifies specific requirements not being met	Affirms government intends to T4D/Cause
Requires contractor to communicate how they will fix or “cure” the situation	Contractor put on notice to provide any/all “excuses” for their failure to perform
Asserts government may T4D/Cause	Reaffirms government does not accept/condone failure to perform
• Must provide for a 10 day cure period	Can be issued without cure notice if less than 10 days remaining for delivery

- correct (“cure”) is not given to the contractor
- Unless commercial contract and reason is late delivery

Excusable Delays

- Excusable delays “failure to perform” include:
  - **Acts of God**
  - **Acts of a public enemy**
  - **Acts of government**
  - **Fires**
  - **Floods**
  - **Epidemics**
  - **Quarantine restrictions**
  - **Strikes**
  - **Freight embargoes**
  - **Unusually severe weather**

FYI: Termination and Cost Liability

	Fixed-Price Contracts	Cost Contracts*
T4D/Cause	$0*	Cost (plus fee on work delivered & **accepted**)
T4C	Cost (plus profit on work done)	Cost (plus fee on work done)
Breach of contract by Government	Cost (plus profit on work done and potentially anticipatory profits)	Cost (plus fee on work done and potentially anticipatory profits)

- Because the Government is not liable for work not accepted, the termination for default has a greater adverse consequence on supply contracts than service and construction contracts

* CCO's will ***not*** be awarding CR contracts in theater

Contract Closeout

Contract Closeout

A contract is not completed until it has been closed; *formally* closed

- **Timely contract closeout allows for:**
  - De-obligating excess funds
  - Identifies the need for additional funds
  - Allows all affected activities to concentrate on current and future requirements
- **We must ensure:**
  - All of the customers' requirements have been met
  - **Government property and Classified information dispositioned**
  - Contractors have received all monies due
  - Past performance has been documented
  - All contractor AND Government tasks are complete

Government Property - Disposition

- **Government Property May be Disposed of in Numerous Ways and Processes:**
  - It may be **scrapped** through an approved scrap procedure.
  - It may be **purchased** at ACQUISITION COST (CAP Only!!!)
  - It may be **transferred, donated** or **sold**
  - It may be directed to be **destroyed** or even **abandoned**
- **MUST be Done in Accordance with Applicable Laws and Regulations**
  - Federal Property Administrative Services Act of 1949
  - The Federal Management Regulations and the

Disposition of Contract Files

When the Operation is Complete…

- CCOs must consider and coordinate physical disposition of contract files
  - Has a "statement of release" been accomplished for contracts?

Record	Retention Period
(1) Contracts (and related records or documents, including successful and unsuccessful proposals) except see paragraph (c)(2) of this section for construction contracts.	6 years after final payment.
(2) Contractor's payrolls submitted under construction contracts.	3 years after contract completion unless (c)(8) of this section applies.
(3) Unsolicited proposals not accepted by a department or agency.	Retain in accordance with agency procedures.
(4) Files for canceled solicitations.	6 years after cancellation.
(5) Other copies of procurement file records used for administrative purposes.	When business use ceases.
(6) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.
(7) Data submitted to FPDS, all procurements exceeding the micro-purchase threshold, and information required under 4.603.	6 years after submittal to FPDS.
(8) Investigations, cases pending or in litigation (including protests), or similar matters (including	Until final clearance or settlement

claims?

- See FAR 4.805 Table 4-1

1. Contract Termination
2. Formal Claim
3. Contract Modification
4. Unauthorized Commitment

PRACTICAL EXERCISES